

REMARKS

Applicant has carefully considered the Final Office Action of August 08, 2005 and offers the following remarks.

Claims 3-9, 11-13, and 15-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent 6,714,637, Kredo, in view of United States Patent Application Publication 2002/0094076 to Chen. Applicant respectfully traverses.

The current application is assigned to Nortel Networks Limited as evidenced by the assignment recorded at Reel/Frame: 011680/0350. Kredo, on face, is assigned to Nortel Networks Limited. Both applications had a common assignee as of the time of invention. Kredo was previously cited under 35 U.S.C. § 102(e) because Kredo was filed before Applicant's filing date, but Kredo issued after Applicant's filing date. 35 U.S.C. § 103(c) states:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Thus, because the Patent Office is citing Kredo under 35 U.S.C. § 103(a)/102(e), the provisions of 103(c) are applicable and remove Kredo from the pool of available prior art. Since Kredo is not prior art under 35 U.S.C. § 103, the rejection under 35 U.S.C. § 103 over the combination of Kredo and Chen is improper. Applicant requests withdrawal of the § 103 rejection of claims 3-9, 11-13, and 15-18 at this time.

If the Patent Office requires additional evidence to support the common ownership of the application and the Kredo reference, Applicant requests that the Examiner contact the undersigned so that the appropriate documentation can be provided.

Applicant requests reconsideration of the rejections in light of the remarks presented herein. Kredo is not available as prior art for an obviousness rejection, and the rejection based on Kredo is improper. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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<p align="center">CERTIFICATE OF TRANSMISSION</p> <p>I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:</p> <p>Examiner: <u>Jefferey F. Harold</u> Art Unit: <u>2644</u> Fax: <u>571-273-8300</u></p> <p>_____ Melissa F. Wellington Name of Sender</p> <p><u>Melissa F. Wellington</u> Signature</p> <p><u>10/06/05</u> Date of Transmission</p>
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